

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:F:HAR:POSTF-124589-02
CJSantaniello

date:

JUN 10 2002

to: Team Manager [REDACTED], [REDACTED] LMSB:CTM:[REDACTED]
Attn: Revenue Agent [REDACTED]

from: Associate Area Counsel, LMSB, Area 1 (LM:F:HAR)

subject: **Large Case Advisory Opinion - [REDACTED] Inc.**

This is a follow-up to our written advisory opinion May 6, 2002. In our memorandum, we concluded that the Limited Power of Attorney executed by the taxpayer's president, authorizing its Vice President of Taxes to represent the taxpayer, does not constitute a valid power of attorney because it does not contain the taxpayer TIN or specify the types of tax or taxable years/periods covered, as required by the regulations. We further advised you that the three authorization letters, authorizing the Tax managers to receive confidential tax returns and return information, are also deficient because they do not contain the taxpayer's TIN.

Upon further consideration, we now conclude that the three authorization letters are valid, notwithstanding the absence of the taxpayer's TIN. Under Treas. Reg. § 301.6103(c)-1T(b)(1)(i), section 6103(c) consents (as opposed to powers of attorney) must contain the taxpayer's "taxpayer identity information" described in section 6103(b)(6). The term "taxpayer identity" means the taxpayer's name, mailing address, identifying number, **or a combination thereof**. Section 6103(b)(6). In this case, the three authorization letters contain the taxpayer's name and address, and thus there is no ambiguity regarding the identity of the taxpayer whose tax returns and return information may be disclosed. Accordingly, the absence of the taxpayer's TIN in this case does not render the authorization letters insufficient for authorizing disclosures to the tax managers as contact points.

The above discussion does not alter our previous advice regarding the Limited Power of Attorney executed in favor of the Vice President of Taxes. Under Treas. Reg. § 601.503(a)(2), a power of attorney must contain the taxpayer's TIN to be considered valid. In this case, because the Limited Power of Attorney does not contain, among other things, the taxpayer's TIN, it is invalid.

Finally, we reemphasize that the authorization letters are only valid section 6103(c) consents only to the extent that the tax managers are not considered to be engaged in practice before the Service. As we noted in our previous advice, if the authority to "discuss tax issues", as stated in the authorization letters, entails advocating the taxpayer's position, then the managers would be considered to be practicing before the Service. In such case, the a Form 2848 or similar power of attorney would be required. If, on the other hand, the tax managers are not authorized to advocate the taxpayer's position on tax issues, then the authorization letters will suffice.

Since there is no further action required by this office, we are closing our file in this matter. Please call Carmino J. Santaniello at (860) 290-4077 if you have any questions or require further information in this matter.

BRADFORD A. JOHNSON
Associate Area Counsel
LMSB, Area 1

By: (Signed) Carmino J. Santaniello
CARMINO J. SANTANIELLO
Attorney

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:F:HAR:POSTF-124589-02

CJSantaniello

date: May 6, 2002

to: Team Manager [REDACTED] LMSB:CTM: [REDACTED]
Attn: Revenue Agent [REDACTED]

from: Associate Area Counsel, LMSB, Area 1 (LM:F:HAR)

subject: **Large Case Advisory Opinion - [REDACTED] Inc.**

1. We are responding to your April 15, 2002 e-mail message, in which you requested our legal advice regarding whether the Limited Power of Attorney (in favor of the Vice President of Taxes) and certain authorization letters (in favor of three Tax Directors), executed by the taxpayer's president, permit members of the examination team to disclose returns and return information to the taxpayer's officers and employees. This memorandum should not be cited as precedent.

Conclusion

The Limited Power of Attorney executed by the taxpayer's president, authorizing its Vice President of Taxes to represent the taxpayer does not constitute a valid power of attorney because it does not contain the taxpayer TIN or specify the types of tax or taxable years/periods covered, as required by the regulations. Similarly, the three authorization letters, authorizing the Tax managers to receive confidential tax returns and return information, signed by the president are also deficient because they do not contain the taxpayer's TIN, also required by the regulations. Consequently, the Service should not make any further disclosures to the above four individuals until the taxpayer furnishes proper powers of attorney and/or section 6103(c) consents. In the absence of a power of attorney or consent, disclosures may be made to corporate officers or employees only when necessary to obtain information not otherwise reasonably available.

Issue

Whether the Limited Power of Attorney (in favor of the Vice President of Taxes) and certain authorization letters (in favor of three tax directors) executed by the taxpayer's president permit members of the examination team to disclose the taxpayer's returns

and return information to the employees identified in those documents? U.I.L. Nos. 6103.03-00; 6103.05-00

Facts

LMSB (Financial Services) is presently examining the taxpayer's [REDACTED] and [REDACTED] consolidated returns (Forms 1120) as part of its Coordinated Industry Case (CIC) program. During the examination years, the taxpayer was engaged in the construction [REDACTED] business.

On [REDACTED], [REDACTED] the taxpayer's then-Vice Chairman, executed a "Limited Power of Attorney" (LPA I), appointing [REDACTED] the taxpayer's former Tax Manager and current Vice President of Taxes, as the "true and lawful attorney for and in the name of the [taxpayer]". In that capacity, [REDACTED] was expressly provided with:

[REDACTED]

The LPA does not contain the taxpayer's TIN or specify the type of tax or any taxable period covered.

In [REDACTED] the taxpayer prepared and submitted a Form 2848, designating [REDACTED] as its power of attorney for "all types of tax" for "all periods". Based on verbal advice received from this office that the Form 2848 did not comply with the instructions, the examination team rejected it as unacceptable, requesting that the taxpayer prepare a new Form 2848 identifying the specific types of tax and tax periods.

To date, the taxpayer has not submitted a revised Form 2848. Instead, consistent with past practice, on [REDACTED] the taxpayer furnished the examination team with an updated Limited Power of Attorney, dated [REDACTED] (LPA II). LPA II, effective through [REDACTED], is identical to LPA I in all other material respects.

By letter dated [REDACTED], [REDACTED] (now the taxpayer's President) delineated the tax matters that he, as opposed to Tax Managers [REDACTED], [REDACTED], and [REDACTED] are authorized to handle. This letter specifically relates to income

(Form 1120), employment (Forms 940 and 941), and Excise ("As Required") for the taxable year [REDACTED] and periods falling therein. [REDACTED] also prepared identical letters, dated [REDACTED] and [REDACTED], for the years (and periods within) [REDACTED] and [REDACTED] respectively. The taxpayer's TIN does not appear in any of the three letters.

In each authorization letter, [REDACTED] stated that the following matters are likely to arise:

- (a) Provide the Service with confidential tax information;
- (b) Discuss tax issues;
- (c) Finalize tax issues and sign agreements;
- (d) Sign consents, waivers, or other documents;
- (e) Receive refund checks; and
- (f) Receive notices and other written communications.

Each letter similarly provides that [REDACTED], [REDACTED] and [REDACTED] are authorized to handle all matters other than (c) and (d), which [REDACTED] reserved exclusively for himself.

Relevant Law

Section 6103(a) provides generally that no officer or employee of the United States shall disclose any return or return information obtained by him in any manner in connection with his official duties. One exception to this general rule appears in section 6103(e), which permits the Service to disclose the taxpayer's own returns and return information to the taxpayer. Sections 6103(e)(1); 6103(e)(7).

In the case of legal entities such as corporations, such disclosures must necessarily be made by means of disclosures to its officers and/or employees. Such disclosures, however, may not be made as a matter of course to any officer or employee. Under section 6103, the authority to receive tax returns and return information is kept at a fairly high-level. See sections 6103(e)(1)(D)(i), (ii). Lower-level corporate employees have no right, solely by virtue of their positions, to receive copies of the corporation's tax returns or other return information, and must receive authority from high-level officials to do so.

I. Disclosures to high-level corporate officers

The Service may disclose to the following persons the returns and return information of a corporation (and of any subsidiary of the corporation):

- (i) any person designated by resolution of the corporate board of directors or other similar governing body; and
- (ii) any officer or employee of the corporation upon written request signed by any principal officer and attested to by the secretary or other officer.

Sections 6103(e)(1)(D)(i) & (ii), (7). Additionally, one percent shareholders of record may also obtain corporate returns and return information. Section 6103(e)(1)(d)(iii). Other than the corporate resolution and/or written request, no other writing (such as a Form 2848) is necessary for a high-level corporate officer to obtain confidential tax return information. Any individual identified in sections 6103(e)(1)(D)(i) and (ii) may authorize other third parties to receive and inspect confidential tax returns and return information.

II. Disclosures to employees other than high-level officials

Where an examination team interacts with corporate employees who are not high-level officials, other authority must exist for the Service to disclose the taxpayer's returns and return information to those employees. The type of authorization necessary for such disclosures depends on the nature of the employee's responsibilities in connection with the examination. Specifically, there are three types of authority necessary that may be used in order to interact with, and disclose return information to, corporate employees, depending on the following:

1. whether the employee is engaged in practice before the Service;
2. whether the employee is acting as a contact point between the Service and the corporation; and
3. whether the employee is providing information to the Service in response to a limited, discrete request by the Service.

A. Corporate employees engaged in practice before the Service

If a corporate employee is engaged in "practice before the Service", a power of attorney is necessary in order for the Service to disclose returns and return information to that employee. See section 6103(e)(6) (permitting disclosures to attorneys-in-fact). The power of attorney must be executed by an officer of the corporation having the authority to legally bind the corporation. Generally, such individual will be a high-level corporate official.

It is sometimes difficult to determine whether corporate employees are practicing before the Service (requiring a power of attorney) or are merely receiving and transmitting information (which, as discussed immediately below, only requires a section 6103(c) consent). See 31 C.F.R. § 10.2(e); Treas. Reg. § 601.501(b)(10). Whether activities constitute practice before the Service is a question for the Director of Practice, who regards advocacy of the taxpayer's position as a key indicator of practice. If a corporate employee is practicing before the Service, a power of attorney needs to be secured before disclosures may be made to such employee.

In general, a power of attorney must contain certain information concerning the taxpayer, the recognized representative, and the specific tax matters for which the authorized representative is authorized to act. The specific requirements for a power of attorney are set forth in Treas. Reg. § 601.503(a), and include the following:

1. name and mailing address of the taxpayer;
2. identification number of the taxpayer;
3. employee plan number (if applicable);
4. name address of the recognized representative;
5. description of the matters for which the representation is authorized including -
 - i. the type of tax involved;
 - ii. the federal tax form number; and
 - iii. the specific years/periods involved.

A recognized representative must attach to the power of attorney a written practice declaration. Treas. Reg. § 601.502(c).

In the case of a corporation, a Form 2848 must be signed by a corporate officer with authority to legally bind the corporation. Treas. Reg. § 601.503(c)(3). A properly completed Form 2848 satisfies the requirements for both a power of attorney (as described in Treas. Reg. § 601.503(a)) and a practice declaration (as described in Treas. Reg. § 601.502(c)). The Service will, however, accept a power of attorney other than Form 2848, provided the document satisfies the requirements of Treas. Reg. § 601.503(a)(1) through (a)(5).

In this case, the LPA-II, which purports to grant [REDACTED] with power of attorney for the years under examination, was furnished to the Service in lieu of a Form 2848. Although a power of attorney need not be in the form of a Form 2848, it must nonetheless satisfy the requirements of Treas. Reg. § 601.503(a)(1) through (a)(5) to be valid. As previously noted in this regard, however, the LPA-II is deficient in several material respects, as it does not specify either the type of tax involved, the federal tax form number, or the specific years/periods involved. It also fails to include the taxpayer's TIN. Consequently, the examination team should not make any disclosures to [REDACTED] until a valid power of attorney is received from the taxpayer.

B. Corporate employees acting as a contact point

Section 6103(c) provides that the Secretary may disclose the return or return information of any taxpayer to such person or persons as the taxpayer may designate in a request for or consent to such disclosure. If the corporate employee is acting as a contact point regarding an examination by the Service, then a disclosure consent under section 6103(c) may be obtained from the corporation in order to authorize disclosures of return information to the employee. Under Treas. Reg. § 301.6103(c)-1T, there are two types of consents: general purpose consents, see Treas. Reg. § 301.6103(c)-1T(b); and consents to disclosures relating to a taxpayer's request for information or assistance with regard to a tax matter, see Treas. Reg. § 301.6103(c)-1T(c).

The Form 8821, Tax Information Authorization, has been designed to meet the requirements of the regulations under section 6103(c). According to the form's instructions, Form 8821 entitles the designee to inspect and/or receive confidential tax information for the type of tax and years or periods listed on the form. It further specifies, however, that the Form 8821 (unlike the Form 2848) does not authorize the designee to advocate the taxpayer's position with respect to the Federal tax laws.

The Service will accept a section 6103(c) consent other than Form 8821, provided the document satisfies the requirements of Treas. Reg. § 301.6103(c)-1T(b). If a Form 8821 is not used, the consent must consist of a separate written document (such as one side of an 8 1/2" by 11" piece of paper or a separate computer screen) pertaining solely to the authorized disclosure. Treas. Reg. § 301.6103(c)-1T(b). The document must be signed and dated by the taxpayer. In the case of a corporation, the consent must be signed by "any officer of the entity with authority under applicable State law to legally bind the entity[.]" Treas. Reg. § 301.6103(c)-1T(e)(4). It must also contain the identity of the

taxpayer, the identity of the designee, the tax year, and the type of tax or items of tax information to be disclosed.

In this case, the authorization letters signed by the taxpayer's president, authorizing the three tax managers to receive confidential tax information, are also deficient. Specifically, although each letter is in the form of a separate written document, is signed by an officer with authority under state law to bind the taxpayer, and identifies the type of return and taxable years covered, they do not contain the taxpayer's TIN, as required by Treas. Reg. § 301.6103(c)-1T(b). Consequently, members of the examination team should refrain from making any further disclosures to the three tax directors or any other employee until they receive either a valid Form 8821 or similar written authorization from the taxpayer.

Additionally, as noted above, it is sometimes difficult to determine whether corporate employees are practicing before the Service or merely acting as a contact point for receiving tax information and correspondence from the Service. In this case, there is some uncertainty regarding the extent of the authority conferred upon the three tax managers by [REDACTED] in his authorization letters. In each letter, [REDACTED] states that the tax managers are authorized to "discuss tax issues". If the authority to discuss tax issues entails advocating the taxpayer's position, the managers would be considered to be practicing before the Service, thus requiring a Form 2848 or similar power of attorney. If the tax managers are not authorized to advocate the taxpayer's position on tax issues, then a Form 8821 or similar section 6103(c) consent is sufficient.

Before soliciting revised authorization letters from [REDACTED], we suggest that you first ask him whether the tax managers are authorized to advocate the taxpayer's position on tax matters. If such is the case, then you should inform him that the authorization letters are insufficient, and that a Form 2848 is required because the authorization to advocate constitutes practice before the Service. [REDACTED] may, however, include restrictive language in the Form 2848, expressly providing that the tax managers are not authorized to finalize tax issues or sign agreements, consents, waivers, or other documents. Otherwise, if he remains unwilling to execute Form 2848 in favor of the tax managers, he must be informed that the tax managers will be unable to advocate the taxpayer's position during the examination.

C. Corporate employees responding to a request for information

In the absence of a power of attorney or section 6103(c) consent, disclosures may be made to corporate officers or employees when necessary to obtain information not otherwise reasonably available. See section 6103(k)(6); Treas Reg § 301.6103(k)(6)-1. Section 6103(k)(6) does not however, provide Service employees with authority to discuss issues with the corporate employees. Because this disclosure authority is very limited, disclosures made under section 6103(k)(6) should be made solely for the purpose of obtaining needed information and only on a need-to-know basis.

We are simultaneously submitting this memorandum to the National Office for post-review and any guidance they may deem appropriate. Consequently, you should not take any action based on the advice contained herein during the 10-day review period. We will inform you of any modification or suggestions, and, if necessary, we will send you a supplemental memorandum incorporating any such recommendation.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney-client privilege. If disclosure becomes necessary, please contact this office for our views.

Since there is no further action required by this office, we will close our file in this matter ten days from the issuance of this memorandum or upon our receipt of written advice from the National Office, whichever occurs later.

Please call Carmino J. Santaniello at (860) 290-4077 if you have any questions or require further information in this matter.

BRADFORD A. JOHNSON
Associate Area Counsel
LMSB, Area 1

By: CARMINO J. SANTANIELLO